

26 March 2018

By post & email: Emma.Bate@ico.org.uk and Aaminah.Khan@ico.org.uk

O +44 20 7655 1000
F +44 20 7655 1001
squirepattonboggs.com

Laurence Winston
T +44 207 655 1760
DF +44 870 458 2804
laurence.winston@squirepb.com

Emma Bate
Information Commissioner's Office
Wycliffe House
Water Lane
WILMSLOW
Cheshire
SK9 5AF

Our ref LMW/CAM.229-0001

Dear Sirs

Our Client: SCL Elections Limited

We write with regard to the decision taken to execute the warrant immediately after the hearing of the application on Friday 23rd March 2018.

As you know, under Schedule 9 of the Act, warrants must be executed at a reasonable hour unless there are grounds for suspecting that the purpose of the warrant will thereby be frustrated.

In the context of commercial premises, 'reasonable hour' plainly means in normal working hours, not at 8.30pm on a Friday night, less than 2 hours after the warrant was granted (at 7:00pm) and when there was unlikely to be anyone from the company there to supervise the search. As a result, it was necessary for the ICO to drill locks and to take other avoidable and intrusive action (as to which, see more below).

There were no grounds whatsoever for suggesting that the purpose of the warrant would be frustrated unless it was executed at that time. This is evidenced by the fact that ICO did not think it necessary to make the original application on an ex parte basis. Moreover, as Mr Justice Edis pointed out at the hearing on Wednesday last week, there had already been ample opportunity for our client to destroy the material in question had it been minded to do so. As a result, there was no urgency to the application, a proposition with which your counsel expressly agreed.

There is no basis for asserting that the position had changed between that time and Friday evening. On the contrary, the only reasonable inference to be drawn is that, consistent with the way in which it approached matters throughout last week, the ICO was far more concerned with maximising the available publicity than it was with respecting our client's rights and property.

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These are not the actions of a fair, proportionate and independent regulator, particularly when our client had asked for the ICO to execute the warrant on appointment, partly to minimise disruption and also to ensure that our client could instruct and have available to it a solicitor of its own, in order to ensure the propriety of the search. Our client's lawyers had left Court on Friday evening having been given to believe by the ICO that it would comply with this request.

For the avoidance of doubt, our client's position is that the warrant has been unlawfully executed and that the items seized are now unlawfully in your possession. We therefore request the immediate return of all the items which were taken. In order that we may then advise the company going forwards, we would be grateful if you could please disclose all material relating to the decision to execute the warrant on Friday evening. This should include (without limitation) the following:

- i) Copies of all emails and other correspondence passing internally at the ICO on this topic.
- ii) Copies of any memoranda or briefing notes in relation to the same.
- iii) Attendance notes or minutes of any meetings (whether in person or by telephone) at which this issue was discussed.
- iv) Copies of correspondence entered into between the ICO and the third parties listed in Part 7 of the ICO's application.
- v) Details of any information provided to any member of the press (whether orally or in writing) giving any indication of the timing of the execution of the warrant..

By all appearances, whilst we were left in the dark (indeed, given a wrong impression), the media were tipped off about the execution of the warrant.

We are also now concerned about the accuracy of the information provided to us at Court by Miss Poole (namely to the effect that she didn't know when the warrant was to be executed). Given that the arrangements for its execution had plainly been put in place before the hearing started, and given further that someone present at Court delivered the warrant to the search team, it seems most unlikely that Miss Poole was ignorant of the situation. We invite her please to make a witness statement clarifying the true state of her knowledge and belief at that time.

We look forward to receiving this material as soon as possible, and in any event within the next seven days. If you refuse to do so, this correspondence will in due course be put before the Court as necessary. In the meantime, all our client's rights are reserved. For the avoidance of doubt, this includes the right to institute civil proceedings against the ICO and/or to object to the admissibility of the material seized (whether under s.78 of the Police and Criminal Evidence Act 1984, or otherwise).

Finally, we wish you to be entirely clear as to the scale and nature of damage resulting from the manner in which you executed the warrant. Putting to one side the physical damage, as a direct result of the manner in which you executed the warrant and entirely predictably, the company and its affiliates are materially impeded in performing (and in some cases unable to perform): (a) contractual obligations; (b) other remunerative work; (c) day-to-day operations.

Of particular concern are the laptop computers and other hardware which were seized. As you will know, under Schedule 9, you are only entitled to these items for as long as is necessary in all the circumstances. Provided they have been imaged already, they should now be returned immediately. If this process has not yet been undertaken, it should be done as a matter of urgency. It will cost our client approximately £100,000 to replace this equipment should that become necessary. For the avoidance of doubt, it will look to recover that cost from the ICO, along with compensation for any consequential loss which has also been incurred.

Yours faithfully



Squire Patton Boggs (UK) LLP